

RACING NEW SOUTH WALES APPEAL PANEL

IN THE MATTER OF THE APPEAL OF LICENSED JOCKEY THOMAS HUET

Heard at Racing NSW Offices on Monday 25 January 2016

APPEAL PANEL

Mr R Clugston - Principal Member
Mr J Fletcher
Mr K Langby

REASONS FOR DECISION:

PRINCIPAL MEMBER: This is an appeal by licensed jockey Thomas Huet (hereinafter referred to as “the Appellant”) against a finding of guilty and the penalty imposed by Stewards at the Rosehill Gardens Racecourse on 19 December 2015 in respect of a breach of “improper riding” under AR137(a). That rule provides that:

*“Any rider may be penalised if, in the opinion of the Stewards,
(a) He is guilty of careless, reckless, improper, incompetent or foul riding.”*

The particulars of the improper riding charge were that as the rider of He’s Our Toy Boy in Race 7 the Property Market Benchmark 60 Handicap at the Wyong Racecourse on 17 December 2015 the Appellant did in the concluding stages of that race shift his body position towards Smarty Pants ridden by apprentice Jessica Taylor which was improving to his inside and improperly extend his right arm which made contact with the body of apprentice Taylor close to the finishing line.

The Appellant entered a plea of not guilty to the charge before the Stewards however the Stewards found the charge proved and suspended his licence for a period of four weeks to commence on Monday 28 December 2015 and to expire on Monday 25 January 2016 on which day he may ride. The Appellant was granted a stay of proceedings on 21 December 2015 until further order of the Panel.

The Appellant maintained his plea of not guilty to the charge in the proceedings before the Panel. Consequently, this appeal is a rehearing on the questions of guilt and penalty. The Stewards were represented in the proceedings before the Panel by Mr M Van Gestel, Deputy Chairman of Stewards - Operations, and Mr W Pasterfield, Solicitor, appeared for and with the Appellant by leave.

The transcript of the Stewards’ inquiry conducted at Wyong Racecourse on 17 December 2015 and at Rosehill Gardens Racecourse on 19 December 2015 and the hearing of the charge which took place at the Rosehill Gardens Racecourse on 19 December 2015 and the video recording of the race in question have been admitted into evidence in the proceedings before the Panel.

The undisputed facts are that approaching the home turn in the race in question Our Catch (ridden by A Hyeronimus) was leading followed by Apache Lad (ridden by C

O'Brien) travelling on its outside with He's Our Toy Boy (ridden by the Appellant) improving to the outside of Apache Lad with Smarty Pants (ridden by apprentice Taylor) moving into the race but travelling behind the three leading horses. Shortly after entering the straight Apache Lad and He's Our Toy Boy reached the lead together as Our Catch weakened and Smarty Pants was searching for a gap between Apache Lad and He's Our Toy Boy. Half way down the straight Smarty Pants pushed into a gap between those two horses and Smarty Pants travelling to the inside of He's Our Toy Boy and that horse then drove to the finishing line with Smarty Pants prevailing with a winning margin of half a head over He's Our Toy Boy.

In the concluding stages of the race the Appellant's body position in the saddle shifted inwards towards Smarty Pants and his right elbow protruded out towards apprentice Taylor as her mount reached the lead just prior to the finishing line. The issues in this case are whether the evidence supports a finding that the Appellant's right elbow makes contact with the body of apprentice Taylor and, if so, whether that contact was intentional on the part of the Appellant.

In the initial stages of the Stewards' inquiry the inquiry Chairman, Mr Van Gestel, questioned apprentice Taylor as to whether there was contact between her and the Appellant approaching the finishing line of the race in question. She responded on more than one occasion that she could not recall if there was any contact with the Appellant. After the video recording of the race was played at the inquiry the following exchange took place between Mr Van Gestel and apprentice Taylor (page 3, lines 118 to 135):

"Q. All right, Jessica Taylor, what do you say after looking at the films?

A. Yes, looking at the films, I don't know-it was really only in the last couple of strides and it does look like Thomas's horse has just shifted in towards me a bit. As I said, I wasn't sure of contact- I mean obviously if I was beaten it would be grounds for protest for sure, but at the time I wasn't aware of the contact.

Q. So at 39.22 do you say that there is contact between your body and Thomas Huet's arm?

A. There does look to be. I don't know if my arm is pushing forward at that point and whether his is coming in under my elbow. I'm not sure. I didn't feel it but on there it does look that way, but I wasn't aware of it at the time.

Q. As you get towards the winning post, as we run it on at 40-40.01 (video played). What do you say there? If you look at the lateral film there, you are just a nose or so behind Thomas Huet at that point?

A. Yes, Yes, looking at the film, I think probably his elbow comes out just behind mine. I mean I can't see his arm on that shot, whether it's behind my elbow or actually hitting it, but, yeah."

When the inquiry resumed at Rosehill Gardens Racecourse on 19 December 2015 the issue of contact was again raised by Mr Van Gestel with apprentice Taylor as follows (page 6, lines 291 to 300):

"Q. Your evidence subsequent to showing the films, you were of the view that there appeared to be contact between your body and Thomas Huet's right arm

there after you had an opportunity to look at the video. Is that a fair summation of the evidence you gave?

A. On the film it looks that there may have been but, as I stated before, I didn't feel anything.

Q. You didn't feel it in the run?

A. Yeah."

The Appellant was also questioned at some length in relation to his riding style in the home straight in the race in question. The Appellant was asked whether his right arm extended out and he replied as follows (page 2, lines 66 to 72):

"Actually my horse used to be a very naughty horse. He used to hang out worse than what he did the last two or three races. He tried to shift, to hang out at the top of the straight. I came back once and just the last 25 metres it was a body action to keep him straight and just put his head down and just try to put his head down on the line (demonstrating). It wasn't to put Jess in a bad position and create contact with her, it was just to use my body to put him down and stay straight in the last 20 metres (demonstrating)."

The Appellant's evidence as to contact was as follows (page 2, lines 88 to 94):

"Q. Did you actually feel whether there was contact between yourself and Jessica Taylor with your right arm?

A. No. I don't touch her. I never touch her.

Q. You never touched her?

A. Or if I touch her I didn't feel it."

After the video recording was played Mr Van Gestel said to the Appellant (page 4, line 202):

"Do you accept you made contact with Jessica Taylor looking at the video?"

and the Appellant replied (page 4, lines 203 and 204):

"I made contact, yes, in the last 5 metres, but when you ask me if it was my initial intention and I want to do that, it is not."

Mr Van Gestel asked the Appellant to explain his right arm action as apprentice Taylor's mount joins his mount on the inside and the Appellant said (page 3, lines 147 and 148):

"As I say it is a body action to try - my horse starts shifting out, shifting out a little bit and I just pull through the rein to come back on the rein."

When the inquiry resumed at the Rosehill Gardens Racecourse on 19 December 2015 the Appellant gave further evidence in response to further questioning by Mr Van Gestel. At one point the following exchange took place between them (page 8, lines 391 to 396):

“Q. No, but my question to you is, surely there’s an obligation upon yourself, as a rider, if you’ve got another horse improving to your inside that, if your arm extending as it is there, clearly it’s extending in towards the line of Jessica Taylor. Do you accept that you have an obligation then to alter your riding style to bring your arm back in so as to avoid contact?

A. Yeah, I’m agree I should not have my arm in this position at this stage.”

Thereafter the Appellant said on a number of occasions in his evidence before the Stewards that he did not make contact with apprentice Taylor’s body.

The Appellant was called to give oral evidence before the Panel. In his evidence the Appellant indicated again that his extended arm did not contact any part of apprentice Taylor’s body and that his actions in shifting his body and extending his right arm was solely for the purpose of straightening his mount as it was shifting out.

The Panel has considered the evidence and the submissions made on behalf of both parties on the question of guilt. The Panel considers that the essential facts of this case are clearly depicted in the video recording of the race which is in evidence before the Panel. The head on video shot of the field approaching the finishing line clearly depicts the three leading horses travelling abreast of each other with the Appellant’s mount, He’s Our Toy Boy, on the outside, Apache Lad (ridden by C O’Brien) on the inside and Smarty Pants (ridden by apprentice Taylor) between those two horse. It is clear from the video recording that as those three horses approach the finishing line the Appellant’s body position in his saddle shifted inwards towards Smarty Pants travelling on his inside and the Appellant’s bent right arm then protruded some distance from the Appellant’s body.

The Panel is satisfied from the video recording that the Appellant’s right arm made contact with apprentice Taylor’s body a short distance before the finishing line. The Appellant’s explanation for the movement of his right arm, being that he was attempting to stop his mount shifting out, is rejected by the Panel as the video evidence clearly depicts his mount shifting in, not out, at the time that his right arm extends towards and makes contact with apprentice Taylor. The Panel is comfortably satisfied that the only available inference on all of the evidence is that the Appellant’s actions were intentional and for the purpose of adversely impacting on the winning prospects of the eventual winner Smarty Pants.

The Panel is also satisfied that the Appellant’s manner of riding constitutes improper riding within the Australian Rules of Racing having regard to the test for improper riding enunciated by the Victorian Racing Appeals Disciplinary Board in the appeal of Chad Schofield (26 September 2014).

The Panel has considered the evidence and the submissions made on behalf of both parties on the question of penalty. The Panel considers that the offending behaviour of the Appellant was a serious breach of the obligations of a licensed jockey to ensure the safety of fellow jockeys. Consequently, the Panel considers that it is necessary to impose a penalty of licence suspension to reflect the objective seriousness of the Appellant’s offending behaviour and to satisfy considerations of punishment, personal deterrence and general deterrence.

In assessing the appropriate term of licence suspension the Panel takes into account that the charge was defended before the Stewards and the Panel with the result that there is no discount available to the Appellant for contrition. On the other hand the Panel takes into account the Appellant's unchallenged evidence that he has been a licensed jockey for fifteen years and has ridden in some fifteen different countries with no previous history of improper riding breaches.

The Panel takes into account the schedule of results in other cases involving improper riding breaches. The Panel notes that in the vast majority of cases in that schedule a penalty of licence suspension was imposed. The Panel also notes that in the case of then licensed jockey Jim Cassidy of 6 December 2014 a licence suspension of four weeks was imposed in relation to facts which were similar to the facts in the present case. Ultimately the Panel agrees with the Stewards that the appropriate penalty in this case is licence suspension for four weeks.

The orders of the Panel are as follows:

1. the appeal against the finding of guilt is dismissed;
2. the finding of guilt made by Stewards on 19 December 2015 is confirmed;
3. the appeal against penalty is dismissed;
4. the penalty of licence suspension of four weeks imposed by the Stewards is confirmed, such suspension to commence on 28 January 2016 and to expire on 25 February 2016 on which day he may ride;
5. the appeal deposit of \$200 is forfeited.
